

June 11, 2007

**City of Milton-Freewater
City Council Minutes**

The Council of the City of Milton-Freewater met in regular session Monday, June 11, 2007 at 7:00 p.m. in the Albee Room of the Library.

The following members were present: Mayor Lewis Key, Councilors Orrin Lyon, Ed Chesnut, Keith Woods, Debbie Kelley, Steve Irving and Brad Humbert.

Staff members present were City Manager Delphine Palmer, Assistant City Manager Linda Hall, City Planner Gina Hartzheim, Project Manager Howard Moss, Public Works Superintendent Dave Bradshaw and Police Chief Doug Boedigheimer.

Citizens present were Lowell Eiffert, Kelly Peterson, Les Peterson, Chris Dirks, Ken Records, Bob Bower, Frank Millar, Clive Keiser, Robert Klein, Hal Thomas, Mike Ladd and Cliff Bentz.

Press member present was Melanie Hall of the Valley Herald and Kathy Korengal of the Union Bulletin.

CONSENT CALENDAR ITEMS: The consent calendar items consisted of minutes from the May 14, 2007 city council meeting, RESOLUTION NO. 2047 Workers' compensation Covering City Volunteers, APPROVAL Liquor License, Chris Dirks owner *The Sandtrap*, RESOLUTION NO. 2048 Authorize Signature to ODOT Grant #23991. Assistant City Manager Linda Hall stated these items could be separated and voted upon separately at the Council's discretion, but under the consent calendar, the Council may vote on all of them collectively. Councilor Chesnut motioned to adopt the consent calendar items. Councilor Woods seconded the motion which passed unanimously.

NEW BUSINESS

BID AWARD POLICE VEHICLE. Public Works Superintendent Dave Bradshaw stated that because of continuing problems with one police vehicle, it was time to replace it. Mr. Bradshaw said he went out to bid and received one bid from Ford Motor Company of Walla Walla in the amount of \$23,023.75. There are sufficient funds in the motor pool to acquire the vehicle.

Councilor Irving stated that while doing some research on this issue he agreed this was the right vehicle overall, but requested that at a future date to consider fuel costs. Some of the alternate vehicles, that do apply, have some constraints within the vehicle for the cab to occupy for passengers. Also, from what Councilor Irving said he understood, Dodge or Chrysler products are eggcrate unibody construction, and when they crash they are usually totaled, so felt the right vehicle had been chosen at this time.

Councilor Lyon asked who had been sent bids. Mr. Bradshaw said he had sent bids to Gilbert Dodge, Gilbert Chevrolet, Ford of Walla Walla and O'Brian Chevrolet. Ford of Walla Walla was the only response.

Councilor Kelley stated that her employer had recently purchased a new vehicle much the same as this one being discussed.

Councilor Kelley then motioned to award the police car to Ford of Walla Walla in the amount of \$23,023.75. Councilor Humbert seconded the motion which passed unanimously.

There being no further business items, the Council entered into a special work session for the purpose of discussing water resource issues.

City Manager Delphine Palmer stated that council members and staff had discussed having a special council work session to discuss water issues. There is a lot of information along with a lot of confusion. It was decided to invite experts with water issues to give the Council and staff an overview of the subject. Ms. Palmer introduced Michael Ladd, North Central Region Water Resource Manager and Attorney at Law Cliff Bentz from Ontario, Oregon. Mr. Bentz understands the issues from both sides, the legal and agricultural.

Clifford Bentz, Attorney at Law with Yturri Rose LLP law firm, Ontario Oregon, stated his first recollection of water issues was when he was raised on his Grandfather's ranch. About 600 cows were raised on that ranch, which was irrigated. Mr. Bentz decided to go to work for Senator Yturri in his law firm in Ontario, Oregon. While there, Mr. Bentz said he enjoyed working on water issues and asked Governor Neil Goldschmidt to appoint him to the Water Resources Commission, which he did in 1988. Mr. Bentz said he served on this commission from 1988 through 1996, and was chairman the last two years he served.

Mr. Bentz stated that the basic plan the City now has in place, was actually adopted shortly after Mr. Bentz became a member of the commission, about nineteen years ago. Mr. Bentz said that at that time, he did not have a good understanding of what basin plans were, but has a much better understanding now. Currently, Mr. Bentz said he lives with his wife and two children on a hundred-acre farm just outside of Ontario, Oregon. Mr. Bentz declared that he personally knows how important water is, and also knows for city purposes, how important the future of a small town is in Oregon as the firm represents the City of Ontario, Oregon. Their water is from wells, but also the Snake River. Mr. Bentz stated that Ontario may as well be part of Idaho, because the State of Idaho has announced the shut down of about 33,000 acres of land irrigated by wells that draw from the Snake River aquifer. The shutting-down process began today. That translates to about \$30 million in crop loss as a shut-down progresses through the summer. That unfortunate situation is the direct result of the lack of seeing into the future. Our current system is to fully exploit our resources, and those who show up last get shut off. After working on the commission for eight years and watching how the shut-off kind of works, it became apparent that there had to be a better way of controlling water. The better way, of course, is to try to look ahead and plan so that one does not create unreasonable expectations and then after allocating water, tell people that they are last and they will be cut off. These people argue that being cut off will eliminate all of their years of hard work, and we have to tell them, "Too bad!" The immediate response is, "Why did you ever let me do this? Why would you give me a water right and then shut me off after I have acres and acres planted?" Mr. Bentz said he had sat through these meetings at the commission level and heard these exact arguments. The challenge facing the City (and this is why City Manager Delphine Palmer invited Mr.

Bentz to address the Council) is the inability, when it comes to ground water, of being able to appropriately measure what is available. There is a constant argument about under utilization of this valuable resource. So what happens, is you end up creating a set of priorities and things to try to protect. This is what a basic plan tries to do in a less than refined way. Mr. Bentz turned some time over to Mike Ladd, North Central Region Water Resource Manager, and said he had worked with Mr. Ladd on many situations.

Mike Ladd, North Central Region Water Resource Manager, said the basin plan is an administrative rule adopted by the Water Resources Commission, and it classifies water use and the different types of uses the department will entertain when applicants file for water rights. This classification can be in ground water and/or surface water. There is a five-mile classification cap for ground water, but there is also classification on the Walla Walla River. This is not the only criteria the department reviews when an application is filed. There are other rules—water availability and the possibility of injury to existing water rights. The criterion has evolved from the department's 100-year process of dealing with water rights.

Mr. Ladd further stated that it is not an enjoyable experience to shut water rights off. With ground water, it is difficult to measure and it is expensive to measure. There are many areas where there is not a good scientific basis to know what a sustainable water supply that can be developed in a given area. Today, the department's strategy is to error on the side of caution and place conditions in permits. Currently there are three to four critical ground water areas on the west side of Umatilla County and this is not a fun way to do business nor is it sustainable.

This is how the department reviews applications tied in with some other tools like scientific ground water studies to try to identify what is sustainable. What is the recharge in a basalt aquifer? What can we take out and still maintain relatively stable water levels? These are tough questions with complex answers.

Mr. Ladd said rather than bore everyone with the Water Resources Department 690 Division 507 Rules of the Umatilla Basin, he would highlight pertinent facts from the Walla Walla Sub-basin, which is the area most in and around the City of Milton-Freewater to be concerned with. This is the sample classification for ground water in the Walla Walla sub-basin. Under Sub-section A, the classification says, "The Walla Walla Sub-basin is classified for statutory exempt ground water uses." What this means with regard to water law is that the legislators have granted some exemptions where one would not actually have to go through an application process to get a water right. Typical exemptions are irrigating ½ acre, watering a non-commercial garden, domestic use, livestock watering, or single industrial/commercial use. This is just a few samples of the exemptions that may be exempt by the legislation. This particular basin program under Sub-section A (3) is classified for the statutory exempt ground water uses, for irrigation, municipal, industrial power development located through geothermal mining, fish life/wildlife migration, abatements and artificial ground water recharge. Then the language goes on to an "AND", which basically revolves around these cities, Athena, Helix, Milton-Freewater and Weston a classification of a five-mile radius around the basalt wells of those cities as restricted, once these cities has an effective water management plan that has been approved by the Water Resources Department. Beginning with classification A, there is a fairly open

classification program where the department would allow a lot of different types of uses to be entertained in the application process, but once a city submits an approved conservation plan, the department squeezed down the classification to the area now classified for exempt ground water uses, municipal use, and also subset or quasi municipal use, or is someone who is non-incorporated and they could go for a quasi-municipal type of use. This would still be allowed within the classification. Group Domestic is another part that is allowed in the classification.

Councilor Chesnut asked for clarification stating that the municipal and group domestic classification are both water providers for a group of people. Mr. Ladd said this was correct. Councilor Woods further asked for clarification stating the possibility of a mobile home lot providing water to multiple residents. Mr. Ladd said this was correct, this would probably be under group domestic. Mr. Ladd said that one challenge under group domestic is the disallowance of water use for lawns and gardens. It is only for group domestic only. Mr. Ladd did say he may have to check on this information for sure.

The map shows several concentric circles because the City of Milton-Freewater has several wells, and each well is designed with a five-mile radius circling the well. If anyone applies for water rights within any of these concentric circles to request something that is not classified, the Water Resources Department will deny the application. If it can be proven that a particular well is either, by way of its construction or post construction, will have a barrier between that well and the City wells, then the Water Resources Department may be able to move forward if there would not be any interference. The rules simply say to refer this to the Water Resource Commission for the determination of a public agency. With some applications from this area, staff from the Water Resources Department have actually examined some of the wells and concluded, based on the proposed construction, the proposed well would still interfere and be in the same aquifer. Staff from the Water Resources Department did not find any barriers. Backing up a bit, the idea is that the department would protect the City by drawing a circle around it and saying the department has determined that the City is the most important thing and the people in it. If someone could show that they would not be taking water away from the City and the citizens within, the department would try to allow this through an appropriately controlled process.

Mr. Bentz sited a small city south of Eugene, Oregon. All the houses built were worthless. The wells under group domestic, dry. These people came to the Water Commission and asked what they were going to do. This small community was about ten miles from Eugene. There was nothing the commission could do for them. Cities are given this protective ring to prevent what could happen. Just what happened as the door shut when the conservation plan was going into place for the City. The idea was to protect the City first because there are a lot of citizens that would be upset if they turned on their water and it was not there. If you want to try to get a well, the requirement would be to hire a hydrologist to show there is a barrier of some sort between the well and the City's wells. Mr. Bentz said he did not know if this is possible, but this is what some have done around the City of Hermiston.

Mr. Ladd said that the Commission has approved some water right applications to go to the next step of the processing. The department's staff hydro-geologist has made decisions based on construction because they were shallow basalt wells and did not interfere with the

deeper City of Hermiston wells. The Water Resources Department presented the case to the Commission to determine if the plan is in the public interest. The application process continues and the department reviews possible injury and the availability of water.

Mr. Bentz clarified the process saying there are two protective mechanisms built into the application process. One, to determine and report that there is a barrier with no interference, and two, if the plan is in the public interest.

Councilor Woods asked how the five-mile rule was established. Mr. Ladd said this rule was established before he was hired by the department, but the rule was established in 1988. In a general case with basalt formations, the question would be how extensive an area would be that would protect the development of the city. Mr. Ladd further said that when discussing this issue with the hydro-geologists, interference can be seen for miles. If an application can show there is a barrier and not on the same aquifer, the application would probably move forward. Councilor Woods asked if the five-mile rule was common throughout the State. Mr. Ladd said it was only unique to the Umatilla Basin, affecting Milton-Freewater, Weston, Athena, Pendleton and Hermiston. Councilor Woods asked if we were the only area with basalt wells, which Mr. Ladd said is not the case. Councilor Woods continued asking if other areas have less than or more than a five-mile radius rule. Mr. Ladd said other areas are classified differently, perhaps by a sub-basin as opposed to a five-mile circle.

Councilor Chesnut said other basins have other classifications used by the department that were deemed appropriate for those basins to protect other cities that have the plan. Mr. Ladd said the basin programs throughout the state have different types of classifications depending on needs and desires of the basin program. Planning for basin programs are unfunded, so the department has not revisited basin plans.

Mr. Bentz said that if the basin plan was not in place and the wells were drilled, what would the protection be for the city? Mr. Bentz further said he recalled the debate of not aborting the city's protection until the conservation plan is in place. How do cities protect their citizens that do not have their conservation plan in place? Mr. Ladd said that in essence, the prior appropriation doctrine would protect cities, but with ground water, the department will review the proposed use to see if they have fully developed the aquifer. In essence, if a city has a well drilled to 500 feet in a 1,000 foot aquifer, and then the city incurs injury or interference, the department would advise the city to either extend their current well or drill a new one to fully develop the aquifer.

Councilor Kelley asked how it is known that city wells are fully developed within the aquifer. Mr. Ladd said hydro-geologists in the Salem office are called and they review the data and geological investigations. In some parts of the state, the department is rich with information, but there are other parts of the state that the information is poor requiring more geological investigations. Councilor Kelley then asked if a geological investigation could determine depth of an aquifer(s) and where there may be barriers. Mr. Ladd said that yes, these investigations could determine this information. Mr. Bentz asked if there had been a rough estimate already made on barrier issues, as Mr. Bentz said he thought that in the particular case that has spurred this discussion, it was determined there were no barriers. Mr. Ladd said that typically, the department hydro-geologists staff will not do an

exhaustive investigation, but if there is data sufficient to make a determination, then the department will do so.

Councilor Humbert said the municipal wells are exempt, but what if a city wanted to drill a well outside the city limits, but within the five-mile radius, for the purpose of selling the water. The city would apply for the water right, sell the water for irrigation and control the well. Mr. Ladd said that for irrigation the application would be denied. Councilor Humbert said that irrigation is within the exempt status. Councilor Kelley said irrigation is exempt for half acre parcels only. Mr. Ladd said the definition of a municipality is broad. A municipality can use water for industrial, commercial, for lawn watering, golf courses and, of course, human consumption. The department would still review the application for injury and water availability. Councilor Humbert in clarification said that the city could not drill a well and sell the water to local farmers. Mr. Ladd said he would have to research a city selling water for farm use to determine if this would fall under the definition of municipality. Councilor Humbert said there is a circle around the city to protect the city where all applicants are just told no, but if the city were to do something where they were in control and still protecting the municipal water system and shut the wells down, they are still told no. Mr. Bentz said that under the assumption that a city could sell water to a farmer for irrigation purposes, then there would be a shift of who would shut the water off for the farmer, and how to appropriately explain to the farmer the risk the city is taking by selling the water. Mr. Bentz said there is an almost identical case, and the city would have to have a prioritization arrangement by the city for the citizens they supply water. If a municipality were to run short of water, the prioritization arrangement would pre-determine who would be shut off first. Mr. Bentz further said he did not know if a person such as Mr. Ladd would be willing to inform your farmer that his water will be shut off. Mr. Ladd said that under the scenario described, the city would be the provider and the department would not come within the system and shut the farmer off. Because this new drilled well, with a new water right, would impact another senior water right that is fully developed, the department may come in to shut the well down, but the city would determine individuals to shut off.

Mr. Bentz said the question that always comes to surface is how much of a resource is really there. A hydrologist was asked what it would cost to answer this question. His very cautious answer was between \$10,000 and \$Gazillions of dollars. Mr. Bentz continued saying that there is only so much certainty with a geological investigation necessary for cities to make economically dangerous decisions.

Mr. Bentz gave a document to the Council from the state attorney general's office. Mr. Ladd said that because the city has a conservation plan in place, the City can issue a letter in support of an application, but the City cannot make decisions with regard to an application. If the application is filed without evidence of a barrier, and if there will be interference, then the Water Resources Department will deny the application.

Mr. Bentz asked if the City Council could support a pending application, initially denied, but now in protest status, and what weight the City Council decision would carry? Mr. Ladd said he did not believe the City Council decision would have any bearing on the outcome. When an application goes into what is called, a contested case process, the evidence presented there are administrative rules.

Mr. Bentz said that an element common to successful applicants is the ability to show there is a barrier. How is the barrier proven? Can the Water Resources Department find the existence of a barrier? The department has already called and found there was not a barrier, and anyone who wanted to drill a well within the five-mile radius would have to find a hydrologist that would say there is a barrier between the proposed well and the City's well. Mr. Bentz further explained that what usually happens is a war of the experts. The applicant finds a hydrologist that says there is a barrier and the City finds an expert that says there is not a barrier. This is what a case hearing is all about and then the ALJ (Administrative Law Judge) ultimately makes a decision. Councilor Humbert said that if the City does not have any say in the process, why would a city hire an expert? Why wouldn't the state hire the expert to determine a barrier? The department would go into the contested case hearing. Mr. Bentz said cities do not have control of decisions made by the Commission, but they do have power to submit information and protect its own interests. If the City would choose to hire a hydrologist, the information garnered by the expert could be submitted for consideration by the Commission.

Councilor Woods said that barring the fact that we don't have all the hydrological evidence to show the difference in geological breakage so that there are different zones where the basalt water is, we have taken five miles as an arbitrary number. And so what is the process to modify this plan at some future date should the hydrological studies determine what this is and what our zone is, and it becomes 3.8 miles and sort of triangular this way, but not a perfect circle because things aren't perfect like that.

Mr. Ladd said that the process is set up now should that occur, if someone could show there is a barrier, they can actually get their feet in the door. With regard to changing the classification program, that is something the Water Resource Commission would authorize the Water Resources Department to go out to a rule-making hearing. The department would review different options and determine what makes sense from a scientific base. If the current classification program is not working, what are the options? The department would then pose the options at a rule-making hearing, which is a very open, public process allowing input, and then a staff report would be presented at the Commission level with recommendations on the options and how the department would like to see the basin plan amended. This is an involved process.

Mr. Bentz said these kinds of issues were discussed at the time the basin plans were established, because most knew the plans were the best we could do with the expertise that was available in the department. It was known the plans would not be perfect, so there were devices that could come in and show a barrier. The good of it is, there was a decision made to favor the cities, to keep them and the citizens within them, protected. And then those that want to affect an already working system, the burden would be shifted to the applicant to prove they would not hurt the city. At the time, it was hoped that the plan would not be to the exclusion of those who may have a ranch or farm near the edge that could prove they were not going to affect the city.

Councilor Woods said that although you may not be able to change the functional rules, once the studies are complete then you could change what the map would look like based

upon the true geological barriers, and with the true geological barriers mapped, this would functionally change the circles to a more geological rational number.

Councilor Irving said it was his understanding that if there is a major earthquake, a forty-year earthquake cycle, there can be a shift in the basalt, and all or some of the fissures can shift and water tables could change and the geological studies would have to be done again. Mr. Ladd said he could not answer that as he was not a hydrologist, not a scientist. Mr. Ladd did say he could research the answer for him.

Mr. Bentz said that from a legal view, there would be the “whoever got there first” rule. The difficulty in making the plan more refined is that the cost is so great in trying to determine what is going on down below. Mr. Bentz said he did not know how many \$Millions have been spent in Bend to try to determine their issues. Mr. Ladd said the department is just completing a study. Typically, ground water studies are done as a cooperative study with the United States Geological Survey. They are looked upon very favorably because of their expertise and non-bias orientation. Umatilla Basin was tabbed to have a study done, but because of several budget issues with the State, this was not budgeted.

Councilor Woods asked how the Water Resources Department views the deep water aquifer recharge projects happening in Washington state. Is it viewed as stored water or above ground water? Mr. Ladd said it was viewed as non-native water; in essence, the City of Pendleton has been very successful with their water recovery project. The Water Resource Commission recently awarded them with conservation stewardship. Previously their water levels had declined about 3.4 feet per year and now have lowered their declines to about 0.3 feet per year. The water is treated as non-native water; they are injecting it and doing a study based on what is called a “limited license to action” test, which is the viability of a project.

Councilor Woods said if we are going to be growing in the valley, and if we are going to be continuously needing water, we are going to need to find ways to store the water and so as a larger plan, figure out even with restrictions to protect the City, but to also make sure, since we are an agricultural community, that we continue to take care of our agricultural needs outside in the larger scope of things. Having some kind of storage, either through the shallow aquifer recharge project which we can clearly demonstrate the wonderful capacity to work, and/or deep water aquifer projects as they clearly indicate they should work. Are there resources available through the state and/or possibly the federal government, to pay for these projects so we can maintain the basalt wells, build them up with new water as the rains come every year and keep our shallow aquifers recharged. Mr. Ladd said Councilor Woods vision is great and parallels with what the Water Resources Department is trying to do now. Mr. Ladd further said he understood the department to be very successful with approved budget by the legislature which the governor has now signed. Within this upcoming budget, money is set aside to do a water supply and conservation initiative to look at a state-wide prospect, review water availability and above-ground storage sights and below-ground storage sights. Conservation will also be reviewed. The department will be looking into the future as far as sustainability. Councilor Woods asked if anyone knew what the City of Walla Walla spent on their recharge program. Hal Thomas, City of Walla Walla Public Works Director stated he thought between \$1.2 million dollars to \$2.6

million dollars. Councilor Woods said he knew this program to be very successful as some of the wells are turning artesian. Washington Department of Ecology is studying this right now.

Kelley Peterson, 606 Craig Street, applicant for a well, stated he sympathized with anyone who had to turn anyone's water off. Mr. Peterson said he had about 212 acres on Telephone Pole Road just off Birch Creek Road. The well says around the 1960s or early 1970s, but in order to irrigate, someone has to shut him off and another person has to use his leaking portable water system, and the person just ahead is watering just to collect his insurance so has to be able to show his insurance adjuster.

Several places have been mentioned that have water issues. Mr. Peterson said he had been to Hermiston this year for the first time in several, and was surprised at how much this city had grown. The five-mile circle in those areas which are probably irrigation wells, become sub-division wells and then the five-mile barrier keeps moving out. The City of Milton-Freewater hasn't seen the growth as Hermiston has, and as far as their application in particular, if one would drive out east of Powell on a cloudy day, one would realize why on the Water Resource map, why the areas are green as it's a higher rainfall area. If there were established grapes out there and someone turned their water off, they would probably be fine.

Mr. Peterson questioned the five-mile system for a City that is not experiencing growth as other cities are. He said he could drill a well within the four-mile area at a much greater power cost. Farmers, whether vineyard or winery or even a COSTCO are all businesses. When an application is made by any one of these entities to use something in or around the City of Milton-Freewater or where ever that may be, the application are based on rules in place at the time of application. When something comes down the road five months later after meeting the rules at the time of the application, the applications become subject to the five-mile radius rule. The implementation of the circle stopped Mr. Peterson from pursuing business here and felt it a waste of his time, and also thought others may feel the same way.

Councilor Lyon asked about the irrigation project in Idaho that was shut off. Was that because other wells were going down? Mr. Bentz said the shut off was just initiated, but the determination was that the wells were drawing from the Snake River aquifer and thus reducing the flow of the water in the Snake River. There is no doubt that this is happening. Study after study have so indicated. Many years and \$Million of dollars have been spent in failed negotiations as of last week. But there is no doubt about the hydro geological connection between that aquifer and the Snake River. One of the priority entities in this particular case is a fish hatchery. They made a call for the water and were offered 45,000 acre feet. That was inadequate, so negotiations fell apart. Action is to shut some people off with the rational of the hydrological connection between the wells and the Snake River.

In brief response, because the application mentioned by Mr. Peterson is pending, and because it is actually at this point a legal matter between the department on one hand and its process on the other, it does not do much good to comment on any part of it because the comments may be bad guesses as to what may ultimately happen. It will be a legal matter

determined by an Administrative Law Judge if the matter is taken further. Whether the rules and timing were appropriately applied is not known.

Councilor Kelley thanked Mr. Bentz and further said the reason this meeting was requested was just to get information and not to comment on particular applications as it is known it would not be appropriate at this time. Instead, the Council and staff are trying to get some background on where we are now and where we could go and what our options are.

Councilor Kelley said she would also like to think that this area is growing. A lot of signs are there that have never been in place before and we need to be very cautious with the resources that the City has because she thought the Idaho issue was many years in coming and any changes made at this point in time might not reflect on the City because we might be dried up and blown away by that time, but it will eventually make a difference.

Councilor Kelley then said she knew at least two wells having oxygen in them and staff rerouted the water to the reservoirs to deplete the oxygen. What was the cause of that? Did it have anything to do with the ground water and basalt?

Howard Moss, Project Manager and prior Public Works Superintendent, said he could answer that as he was directly involved. At the time three wells and now a fourth well had become oxygenated. There was a lot of time spent with geologists and also working with the state to determine the source of the oxygen. It is certain the oxygen was coming from the surface somewhere. It was known that the water used comes from the Blue Mountains generally from the southeast and so there is a hole out there somewhere allowing the air to get in which baffled a lot of people. The resolve for the City of Milton-Freewater was to pump the water directly to the reservoir then let water de-aerate itself through the vents of the reservoirs, and this has been very successful with a lot of cost. Mr. Moss said he was very curious as to the source of the air and had it tested, but it was non-toxic. Mr. Moss said he hadn't looked at this for about a year, but the last time he did, it was still there.

Councilor Woods said that about two years ago during a drought it was suggested to pump water out of one of the city wells into what he believed to be an irrigation ditch. Back to Councilor Humbert's question, that would have been basically, as Councilor Woods thought, irrigating farmers. This was an emergency basis to help farmers to keep their crops going. It would be important to determine whether this was a legal use because that was going directly to their ditches. Mr. Moss said this was the plan under a governor declared drought.

Councilor Chesnut said he sat on the Highway 11 Taskforce along with Councilor Woods as representatives of the Council. That taskforce is trying to look at potential for development between here and the Washington State line on Highway 11. One of the things that seem obvious is that if development happens out there, water has to be provided somehow. One of the things that get suggested every, single time is that the City of Milton-Freewater should run water and sewer out there. Another option is the group domestic or quasi-municipal water right. Councilor Chesnut asked Mr. Ladd if he could touch the highlights of those two classifications and what sort of capability a quasi-municipal water provider might have for being able to provide water to multiple commercial locations along the highway. Councilor Chesnut said he asked for this information to be a little more aware of what the challenges are out there. Mr. Ladd said that quasi-municipal is a subset of municipal because the entity is not incorporated the

same by city use. So in essence they provide the same types of water uses as a municipality, they just do not have some of the preferences that are allowed in statute. As an example, municipality water rights are not subject to five years of non-use. That's a preference that's allowed by water statute. Quasi-municipal does not get that type of preference. There are some other types of preferences that are allowed for quasi-municipal. In essence one could set up a water corporation for providing water and file quasi-municipal water right for whatever the boundary would be. One could also do the same for group domestic. Group domestic is a much smaller subset as far as the different water uses that could be allowed. Councilor Chesnut said he understood group domestic and the homes could be served, but only a total of a half acre of lawn and garden.

Councilor Woods said that if under a quasi-municipal someone would want a well for use for projected growth, and was issued the use, but didn't actually use the water because the growth hadn't occurred yet, then a quasi-municipal could lose that water right because it was not used. Mr. Ladd said this is where water law gets complicated. The five-year, non-use clause relates to legal advice, not purpose. When an applicant turns in their application and it is accepted, they are issued a permit. The permit allows time lines on which to complete your project and put the water to beneficial use. Then you perfect that permit based on whatever you put into use. If the time lines have approached for you to complete the application water and you are not done (i.e. water rights are for 4 cfs and you have only developed 2 cfs) but the permit says you are done and you cannot develop anymore, there is a provision in the law that allows you to request what is called "a time extension" to map out the completion day further so you can fully develop the water right. If you don't think you are going to address or need that additional water then you can go ahead and develop and perfect what you have already done. For the most part, people won't want to do that because there is some long time horizon that they are looking at from a planning perspective and what there gross will be. It's very typical for municipalities to look 25 to 30 years out to project those applications. Councilor Woods asked if the City placed another well outside the city limits, maybe halfway up highway 11, would that create another center of radius for the five-mile rule? Mr. Ladd said yes this would. Councilor Woods then said if we went to the state line it would create a reverse arch, so if the City went to the farthest center part and sunk a well (i.e. almost the state line on the old highway) that would then put us all the way out to the other side.

Councilor Chesnut said he thought the arch already goes to the state line. It does, but as Mayor Key said, the east and west boundaries would change but not the north boundary because of the state border.

Mr. Bentz said that the basin program, which is a set of administrative rules adopted, are how we look at issues for new water rights so we do not impact existing water rights. So if the city extended a new five-mile radius and were successful in applying for a new water right application and permit, it would not affect any existing wells. Councilor Woods said it would affect property owners who then after the fact sunk additional wells. Mr. Bentz said if they had to come through and have a need to actually file a water right application and say it was something more than an exempt water use in this process, it may limit their chances.

Councilor Chesnut said that even the city cannot dig wells if the proposed well would affect other existing wells. Councilor Kelley said it would be more cost effective should the city at any time start developing in a northerly direction, to pump the water that direction rather than sink a new well and set up all new facilities. Councilor Woods said he was not suggesting that the city establish new wells. Councilor Kelley further said the the city could essentially pump water out there from our existing wells without any additional impact with the Oregon Water Resources Department or the Commission. Mr. Bentz said the potential does exist that the city may be able to serve outside the City's boundaries under water law ORS 540.510 which speaks to the extent of the water right. Typically in water law you have an limit. You can irrigate 10 acres. It's not 10 acres here and 10 acres there. It's 10 acres. The legislature made some statutory changes where they have allowed some flexibility for municipalities to remove the limitation, provided it does not impact or repair prior vested water rights. It's not an automatic "yes you can" but something that could be reviewed.

Mr. Ladd said to understand that when looking at the premise of the basin program and what the department was trying to achieve, the department will give care to the cities that go out and put together a water management conservation plan. A lot of times it's a lot more cost effective than building new infrastructure or new wells. You can conserve water and tighten up your system. Because you've got some leaks, you've then extended your water supply. Now obviously in some cases that may not take you far enough depending what your future growth pattern is, but it's probably cost effective. In their wisdom, the City of Milton-Freewater did put in place a water conservation plan, and Mr. Ladd said he knew this was quite challenging to get through this process and the department appreciates all of the efforts made to accomplish this, and Mr. Ladd said this plan has allowed added protection because of those efforts.

Mr. Bentz said that at risk of creating a border fight, he addressed a comment regarding the drilling a wells adjacent to Washington and the interstate debate. When on the Commission, there was a situation where the people in Hermiston were upset because there was a moratorium on the Oregon side to put anymore pumps in the Columbia River. There was some sort of moratorium on the Washington side, but it was put in place after Hermiston had installed 750 acre feet. The director at that point said they would only use water up to the middle of the river. Mr. Ladd said this is an interesting situation and actually the department is having ongoing discussions with the State of California in the Klamath Basin because California has drilled some very large wells and Oregon has actually done some coordination with them because of some of the impacts. Obviously there are no water laws or statutory provisions the department can go with. We certainly have ongoing sessions with the DOE (Department of Ecology) and are somewhat familiar with some of the programs that they are reviewing and some of there water use restrictions. I'm sure that at some time in the future we are going to have to look at what is sustainable in this valley. What is the prioritization of how we look at the water resource study that this state does and where does the Walla Walla Sub-basin fit into that. At least in the past we could prioritize from the whole Umatilla Basin, which Walla Walla is a sub-basin of. The biggest complaint now is the critical ground water areas on the west side, but it doesn't mean that we don't need to do work over here also. The problem the department faces is there is a very finite staff of 140 statewide to manage the water resources of this state and the department has a very finite budget to do water resource investigations, so the

department does the very best they can do as far as prioritizing where they spend their money and also coordinating with other entities.

City Manager Delphine Palmer asked Mr. Bentz if he had covered everything he wanted to before the meeting adjourned. Mr. Bentz said it was previously asked what options the city had and he felt that thus far, only a spattering of options had been shared, so could go through the options individually. What Mr. Ladd was really saying is that before you could really utilize an option, the City would need a study. This could mean real money and the department cannot fund this because of their limited budget. If the city was a large city, you would have all kinds of hydrologists running around and equipped to make all kinds of guesses and studies. We can share some of those options, but each one would require that first step, a study. Mr. Bentz said he did not know who would spend that money, it may be someone outside that thinks the water is so valuable they will hire someone to do the study and put their own spin on it, and then the city would be forced to have their own study to have confidence in the findings.

One option is to determine whether the city could sell the water for farming purposes. Another would be to see if folks are willing to come forward with a study that reflects that. If that happened, then the City would almost instantly be put into a position to hire an expert. There are a couple of other options. He thought Mr. Ladd had mentioned the nature of the well of the applicant. Mr. Ladd said that when someone files a water right application the best advice is not to drill the well first and then file the application. You spend a lot of money setting up the infrastructure and then find out you get a “no” answer. So it would be wise to propose an application as to what you think your well will look like from a construction standpoint, total depth and the aquifer. I don’t know geologically what area Mr. Peterson’s proposed well is in or others in the area. Maybe there are other aquifers without getting into the basalt aquifer; however, that is not without challenges too because when the department looks at water right issues, the department looks at impacts of existing water rights. They also look at surface water/ground water irritants. Particularly, in alluvial wells, the department looks to see if that request in the application is going to impact surface water sources, so a lot will depend upon the depth of the well, the amount of water requested and also the geology of that area and how close is it to the surface water source. If you drill a well immediately adjacent to the Walla Walla River, let’s say 300 feet within the alluvial aquifer that would basically be viewed as tapping surface water from the standpoint of how we look at that issue in the water right application. If we perceive that there is a hydrologic connection to surface water, the department looks at how that specific body of water is classified for surface water and will also look at the impact to the current water right holders in that surface water source. There are not a lot of easy answers as far as options. There may be other options out there.

Mr. Ladd said the basin exception process, which is the States ORS 536, is narrow as far as the exceptions to the basin classification. The basin is classified for certain uses. There is a tool where someone can request an out-of-basin classification. Mr. Ladd said he did not remember the limitations, but it is narrow in scope as far as approval of those kind of exceptions.

Councilor Woods said he understood there were funds in the State budget to do this study. Mr. Ladd said no, there will be funds available for the statewide look at water supply and

conservation initiative. There are limited funds for ground water studies for the entire state.

Councilor Woods asked Bob Bower, Walla Walla Basin Watershed Council (WWBWC) here in Milton-Freewater, if he was working on a deep water study or if the study was a couple years out. Mr. Bower said the focus has been on the shallow aquifer system and the aquifer recharge project. We are currently working on a series of things, GSI (Geological Survey Institute) mapping the shallow aquifer system in the entire Walla Walla Valley and also a shallow aquifer model. At this time the WWBWC has not begun work on the basalt map as they are looking for funding for that project. In the short term, WWBWC will be looking at well levels in many of the wells—basically start building our understanding of the system. We have worked with the City to obtain data on their wells, and are also working with Water Resources, which was prompted by other citizens to begin measuring other wells in the valley.

Councilor Kelley asked what the City's well levels were the last ten or forty years. Are there any changes in levels of City wells? Public Works Superintendent Dave Bradshaw had data with him and said decline has gone down because the City is not using as much. Mr. Moss said this afternoon that a couple of wells were alluvial. They were pumping water out of the ground in artesian. This particular well is about 185 feet. For about six years there is somewhat of a flat line, but has dropped 180 feet since the 1940s to now. The more water you pump out of the aquifer the faster it declines. Councilor Woods asked if it appeared at some point to recharge at some calculable rate. Mr. Bradshaw said it definitely recharges, it's just we use more water than it recharges. Councilor Woods asked if one could take a calculator to determine current water use versus previous water use, what the decline values are, but now are flat-lined and knowing this is not a pure science as Councilor Woods said he understands it to be a moving thing. Mr. Bradshaw said the City does not have all the factors, because the City is only one of the producers from the aquifer, but with the City's data, Mr. Bradshaw said he felt they could come close with calculations.

Councilor Woods said that since the Federal government intervened and established an agreement with the irrigators to leave more water in the river to save the fish there were already existing deep water basalt aquifers. Does the department track how much is utilized? In essence, utilizations over the same course and time impacted by local canneries, "save the fish" organizations, and farmers tapping deep water aquifers within the five-mile zone. Is it possible for the department to track all of these impacts? Mr. Ladd said that particularly with the newly issued permits, they are laden with conditions that require flow meters, require a starting static water level reading, most also have draw down conditions so that if you draw down so many feet in a matter of so many years you can be regulated off or curtailed back. It depends upon the condition of the permit whether they are supposed to provide that data to the department on a yearly basis, or make it available should the department ask. Mr. Ladd said he thought most or all of the large permits are required to have a flow meter. The government organizations then provides the department with information required for their water usage and under certain permit conditions the water user are providing that to us, or making the information available. The older issue permits do not have those requirements, so some of the older permits, say 1960s and 1970s, probably do not have much data as to how much they are pumping until

you get in and actually start developing a water budget to look at what the needs are. In short, the department probably does not have access to all of the information needed to determine what is coming out of the basalt aquifers.

Councilor Chesnut said he thought it would be safe to say in general terms that it is relatively obvious from the drops, 180 foot drop over several decades, and then perhaps some recharge when usage was reduced, the users in that aquifer do not amount to just an insignificant draw. We are significantly using that resource to the point that we are showing significant drops. Mr. Ladd said the City had reached a point that the city is exceeding their recharge rate, so over time, this will catch up. This means deeper pumping levels or perhaps some wells may be dry. How sustainable is that for how long? You can probably plot some of that out and get an idea. Councilor Chesnut said his reason for asking is that one of his personal goals is not to become a critical ground water area. Mr. Ladd said this would be a viable goal.

Councilor Lyon said that in his observation over the last forty years with the harvesting all over the valley here, about thirty-five years ago he was moving harvest equipment to Elgin to do harvest and sat in a snow bank sometime after the 4th of July to eat lunch. There are no snow banks up there, probably not now, and there sure isn't any in July. In the springs we had trouble with water in the fields. We don't have trouble with this experience because there are no springs there, so our recharge supply is down. Mr. Ladd said this could be a possibility based on changes in precept, and certainly snow pack is part of the recharge picture as far as recharge up in the Blue Mountains which then into the basalt aquifer. That's certainly a factor if you are losing and not getting as much recharge as you are used to, plus another part of the equation, you are actually taking off more water in increasing amounts.

Mr. Bentz said to pretend we had all kinds of water and the city had already submitted the conservation plan. The city, having created that protective barrier, found somebody decided they wanted to support a well somewhere inside the barrier. There is no possible way to show there is a barrier between the proposed, new irrigation well and the city well. What could the city do try to assist that farmer? Mr. Ladd said the city should be totally engaged with the Water Resources Department and when the department starts looking at the basin program, we have already had discussions. Mr. Ladd thought Mr. Moss was at a meeting in Pendleton when the department held a subsequent meeting with the cities within the entire Umatilla Basin because they were beginning to look at the cooperative ground water study and wanted to build some partnerships. The department also wanted to get some ideas on what the cities thought about the five-mile radius issue. The department has it on the radar screen, so he thought it would be advantageous for cities to be engaged in that process. When you talk to the different cities throughout the Umatilla Basin, they all have different ideas on what type of protection or not protection they would like to see around the city. And it varies quite a bit. Mr. Bentz said that debate focuses on the plan. That debate will focus on what the department has existing in the basin program that this five-mile radius has to offer. There are different options out there Mr. Ladd said he would look at. Is it scientifically justified? Maybe it is too small. For some of these basalt aquifers you could have impacts a lot further out than five miles. Maybe five miles is not the right answer. But it would be good for cities to be involved and the department would certainly work with the city in that dialogue to do what is needed.

Mr. Bentz said that if the city wanted to protect its position to the utmost, it would quickly move to the outer boundary of the five-mile circle and drill a well, today. And having done so would put its current new well as far as it possibly could from its current well field, thus reducing the draw and spreading out the impact, so if this City Council was moving to really be aggressive, this is what they should do. Mr. Ladd said this is certainly an option but there are no guarantees as far as whether or not you would get a water right as you would still have to go through the process and the department has to look at water availability and usage. Mr. Ladd said he could not predict the outcome of such an application, but could look at the basin classification that says we will entertain an application for a municipal water right, but would not guarantee a successful water right.

Councilor Woods asked if the City currently has a surface water right. Mr. Ladd said he thought the City did, but could not be sure. Mr. Moss said that currently the City has a 1700 gallon permitted water right for a well up the Walla Walla River. Councilor Woods said he thought that if the City was going to pursue a recharge and ensure we were storing the water, obviously the water would have to come to the surface to go to the wells, so then how does the department look at issuing a new winter time flow only for a ground water recharge project. Mr. Ladd said that first, the department would have to look at a basin program classification, but generally the department is optimistic when looking at opportunities for aquifer storage recovery where they make environmental sense. Where as fish and safeguards can be put in place so that the water quality is protected and also a case of when you are drawing from a surface water storage we don't impact some of the aquatic resources. I think a good program perhaps that the City would like to do some research on is with the City of Pendleton and see what they have done. Mr. Ladd said he thought the City of Pendleton had done a marvelous job, and they coordinated with a lot of different entities to achieve their goal which was aquatic-storage recovery by holding surplus winter water based on their water rights and are not harming environmental concerns. They put it down the well and then pull it out at a later time. They have reversed their trend by where they used to rely on about 70% native ground water, 30% on the Umatilla River before they got the water filtration treatment plant, to the reverse. Thirty percent of native ground water and 70% on the surface water of the Umatilla River. There are certainly some opportunities for the City to look at these types of projects. The department would be very enthusiastic to work with the City of Milton-Freewater if they were interested in this type of option.

Councilor Kelley asked if the City of Pendleton went that direction because they are part of the area included in the critical ground water area. Mr. Ladd said they are not in the critical ground water area, but part of their vision is that they did not want to see a critical ground water area either and they were seeing declines. Maybe not as substantial as what you have seen in the past, but three to four feet per year.

Mr. Bentz said let's assume the City does everything in its power to assist an applicant in obtaining a new conditional-use within the five-mile radius. Assume the use is now in

place and the department is conditioned the permit on a 25-foot draw down. Can you tell us the process that is used to try to shut down a non-cooperative user? Mr. Ladd said it was like progressive discipline. He would first begin with cooperation, and if that doesn't work, he said he would progress to the next level. If it reaches the point where cooperation and persuasion does not work, the department has various tools such as criminal prosecution. It is not often the department has to use this tool, but it is in place if needed.

Mr. Bentz said that as far as timing, if the user has an attorney that is knowledgeable and knows the appeal process, what can be the time frame to shut down a non-cooperative user. Mr. Ladd said there is a court case he is involved with currently since October of last year and the issue is not resolved to date. The legal process as well as accessibility on private property can present quite a challenge. This is one of the main reasons the department will seek cooperation. In the State of Oregon we have the Prior In Appropriation Doctrine. There is a body of water law and, in most instances, if one wants to use water they have to have a water right. If they do not have a water right, chances are they are using someone else's water. When you have shortages, this is exactly what happens. Mr. Bentz said he assists on both sides in this portion of water law, most recently in Burns, but that particular case has been ongoing for four years. It is not a well, but a surface water situation and whether or not the department had the right to shut down the user. Even though the department can make it extraordinarily clear on the certificate, and condition the permit on clear events, moving from use to shut-off is quite amazing and difficult and does not happen instantaneously. Even with the best crafted, most carefully negotiated terms inside a certificate, you may still have to shut someone off with \$Millions of dollars of crops at risk. The circle around the city wells is a great device to give the City the power to decide what they want to do.

Councilor Woods asked what is the State's perception of precipitation that hits a farmer's property. At what point does the state have control over this water? While it's falling through the air, when it hits the surface, or once it leaves into some kind of running stream. But when it's on the actual ground on personal ground, at what point does it become the control of the state? Mr. Ladd said this was a difficult question, but there actually is a body of law where legislatures have exempted certain quantities or how it is received on the ground as not a water right. It is exempt if someone can collect water of impervious surfaces and use it without filing for a legal water right. A spring that flows through the surface, does not flow off the property in a well-defined channel, is classed as public water, one would need to file for a water right to use it. But if the spring does not flow off the point of origin in a well-defined channel, it would be classified exempt and one would not need to file for a legal water right; however, the landowner could file for a water right. For the most part, the appropriation doctrine controls most all of the waters.

Councilor Woods said he supposed if one would create micro-dams across their property and retained as much water as possible, not allowing the water to flow off of your own property, would you need a water right to retain the rain water that hit your own property. Mr. Ladd said it depends how the water is collected. If there is drainage and the property owner dams it up, that is not natural. You would be impounding public water. You would

have to look at it and ask if it is going to flow off of the property of origin. So if you change your farming technique by terracing so that you have more natural curvature with rolls so you could sort of force the water gently so the water would not flow off and the soils would just love you for that because you are retaining the water on your dry land wheat farm, would the state have control over that? Mr. Ladd said there are certain agricultural practices that have come about in the last ten years, tillage and more. Some of these practices are exempt. Councilor Woods said that basically if it hits a spring and it would have naturally flowed off your property, then it is considered public. Mr. Ladd said this is true for the most part, except for the few exemptions previously mentioned.

There being no further business, the meeting was adjourned at 9:30 p.m.

Lewis S. Key, Mayor